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Director's Office

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

LDB, Inc.

Facility #59049

Seventy Six Township, Washington
County

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AFO-44

TO: LDB, Inc.
Lynn D. Brenneman, Registered Agent
1130 190th Street
Keota, Iowa 52248

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and LDB, Inc. (LDB) for the purpose of resolving the failure to timely submit a Manure Management Plan (MMP) update and fees for 2010 for the LDB facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to Technical Requirements:

Jeannie Greiner, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to Legal Requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of Penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 or Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. LDB owns and operates a 4,000 head (1,600 animal units) grow to finish hog animal confinement facility. The facility is located at 1850 Birch Avenue, Keota, Iowa (Section 17, Seventy Six Township, Washington County, Iowa).
2. On April 17, 2009, DNR Field Office 6 sent a letter LDB informing the facility that its MMP update was due July 1 of each year. The letter indicated that the DNR would no longer be sending reminder letters to producers for the annual MMP updates.
3. The MMP update and compliance fee for 2010 for this facility was due July 1, 2010. LDB failed to submit the MMP update and compliance fee for 2010 by July 1, 2010.
4. On July 15, 2010, DNR Field Office 6 sent a Notice of Violation letter to LDB for failing to submit the MMP update and fee by July 1, 2010. The letter required LDB to submit the MMP update and fee by August 1, 2010 in order to avoid a further compliance action with monetary penalty.
5. On August 4, 2010, DNR Field Office 6 sent a Notice of Referral letter to LDB. LDB had failed to submit the MMP update and fee. The letter informed LDB the matter was being referred for a formal enforcement action.
6. On August 6, 2010, DNR Field Office 6 received the MMP update and fees from LDB. The MMP update was approved on August 9, 2010.
7. LDB has demonstrated a history of failing to timely submit the MMP update and compliance fee for this facility. On July 18, 2003, LDB was issued a Notice of Violation letter for failing to submit the 2003 MMP update and fee by July 1, 2003. LDB submitted the MMP update and fee on September 3, 2003. On July 23, 2004, LDB was issued a Notice of Violation letter for failing to submit the 2004 MMP update and fee by July 1, 2004. LDB submitted the MMP update and fee on November 11, 2004. On July 13, 2005, LDB was issued a Notice of Violation letter for failing to submit the 2005 MMP update and fee by July 1, 2005. LDB submitted the MMP update and fee on July 18, 2005. Additionally, LDB failed to submit timely MMP updates and fees in 2006 and 2008; however Notice of Violation letters were not issued for these untimely submittals.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.12(13) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to

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submit an updated MMP on an annual basis to the DNR. The updated MMP must reflect all amendments made during the period of time since the previous MMP submission. The owner of the animal feeding operation shall also submit the updated MMP on an annual basis to the board of supervisors of each county where the confinement feeding operation is located and to the board of supervisors of each county where manure from the confinement feeding operation is land-applied. LDB's 2010 MMP update was due July 1, 2010 and was not submitted until August 6, 2010. The above-mentioned facts indicate a violation of this provision.

2. 567 IAC 65.16(3)"c" also states that an annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany the annual MMP update submitted to the DNR for approval. LDB's compliance fee is \$240.00. LDB's compliance fee was due July 1, 2010 and was not submitted until August 6, 2010. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and LDB agrees to do the following:

1. LDB shall pay an administrative penalty of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – LDB's failure to timely submit the 2010 MMP update and compliance fee has allowed the company to save time and money. However the amount of economic benefit in avoided and delayed costs is considered minimal, therefore no economic benefit is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute.

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Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update is a crucial aspect of the DNR's animal feeding operation program. The MMP update ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. LDB's facility has a capacity of 1,600 animal units and environmental harm is likely to occur if the manure is not applied properly. Failure to comply with the timely submittal of the MMP update and fees threaten the integrity of the animal feeding program. Therefore, \$500.00 is assessed for this factor.


Culpability – LDB has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. DNR Field Office 6 sent LDB a letter informing the facility that the MMP update and fee was overdue and the letter provided LDB a timeframe in which to submit the MMP update and fee in order to avoid a monetary penalty. Additionally, LDB has failed to submit at least five previous MMP updates (2003, 2004, 2005, 2006, and 2008) and fees in a timely manner. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of LDB. For that reason LDB waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 23 day of
Sept, 2010.



LDB, Inc. Dated this 9-15-2010 day of
_____, 2010.

Facility #59049; Kelli Book, DNR Field Office 6, EPA, VIII.C.2